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Report of the Secretary-General on the establishment of a special tribunal for Lebanon

I. Introduction

1. In my report to the Security Council pursuant to paragraph 6 of its resolution 1644 (2005) (S/2006/176), I set out at the Council's request the nature and scope of the international assistance needed to try before a tribunal of an international character those responsible for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others. In so doing, I put forward the general principles of a tribunal of an international character, its personal and subject matter jurisdiction, composition, location and the question of financing, on the basis of consultations between the United Nations Secretariat and the Lebanese authorities.

2. By resolution 1664 (2006), the Security Council endorsed the report and requested me to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice, taking into account the recommendations of my report and the views that have been expressed by Council members. The Council also requested me to submit for its consideration a report on the implementation of the resolution, in particular on the draft agreement negotiated with the Government of Lebanon, including options for a funding mechanism appropriate to ensuring the continued and effective functioning of the tribunal.

3. Following initial consultations with the Lebanese authorities in Beirut on 26 and 27 January 2006 and with two senior Lebanese judges from 24 to 28 February at United Nations Headquarters in New York, negotiations on the legal framework for the establishment of the special tribunal for Lebanon on the basis of the Security Council's mandate proceeded at the expert level between members of the Office of Legal Affairs of the Secretariat and the Government of Lebanon, represented by the Lebanese judges. The two delegations met between 31 May and 1 June 2006 at Headquarters and between 3 and 7 July 2006 in The Hague. In this latest round of negotiations the two delegations benefited from the advice and wealth of knowledge and experience of two former Presidents of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. On 6 September, the Legal Counsel travelled to Beirut and presented the initial draft agreement and statute to the Prime Minister and to the Minister of Justice of Lebanon for their consideration.

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4. Requested by the Security Council in its resolution 1664 (2006) to take account of the views that have been expressed by Council members, the Secretariat has, in the course of negotiations, taken into account the views expressed by interested members of the Council on the progress of the negotiations and the principles of the legal framework for the establishment of the special tribunal. These consultations have in many ways shaped the legal choices made in the tribunal's founding instruments.

5. The present report analyses the main features of the statute of the special tribunal and the agreement between the United Nations and the Government of Lebanon. It examines the legal nature and specificities of the tribunal, its temporal, personal and subject matter jurisdiction, its organizational structure and composition, the conduct of the trial process, the location of the seat, the funding mechanism and cooperation with third States.

II. The legal nature and specificities of the special tribunal

6. The legal basis for the establishment of the special tribunal is an agreement between the United Nations and the Government of Lebanon, to which the statute of the tribunal is attached (see annex I). As a treaty-based organ, the special tribunal is neither a subsidiary organ of the United Nations, nor is it a part of the Lebanese court system.

7. The Security Council mandated the Secretary-General to negotiate an agreement aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice. Although the features of such an international character were not specified, the constitutive instruments of the special tribunal in both form and substance evidence its international character. The legal basis for the establishment of the special tribunal is an international agreement between the United Nations and a Member State; its composition is mixed with a substantial international component; its standards of justice, including principles of due process of law, are those applicable in all international or United Nations-based criminal jurisdictions; its rules of procedure and evidence are to be inspired, in part, by reference materials reflecting the highest standards of international criminal procedure; and its success may rely considerably on the cooperation of third States. While in all of these respects the special tribunal has international characteristics, its subject matter jurisdiction or the applicable law remain national in character, however.

8. The special tribunal for Lebanon is distinguished from other international criminal tribunals established or assisted by the United Nations in two respects: (a) in the conduct of the trial process, more elements of civil law are evident than of common law; and (b) the investigative process conducted by the International Independent Investigation Commission constitutes, in fact, the core nascent prosecutor's office.

9. With the exception of the Extraordinary Chambers in the Courts of Cambodia, the conduct of the trial process as reflected in the constituent instruments of all other United Nations-based or assisted tribunals has included more common law elements. The special tribunal for Lebanon is the first United Nations-assisted tribunal to combine substantial elements of both legal systems. The applicability of the Lebanese Code of Criminal Procedure as a guiding principle alongside other

reference materials reflecting the highest standards of international criminal procedure (art. 28), the enhanced powers of the Tribunal to take measures to ensure expeditious hearing and prevent any action that may cause unreasonable delay (art. 21) and the introduction of trials in absentia (art. 22) are the most notable manifestations of civil law elements.

10. The establishment of the special tribunal for Lebanon will have been preceded by the Commission established by Security Council resolution 1595 (2005) to assist the Lebanese authorities in their investigation of all aspects of the terrorist attack that killed former Prime Minister Rafiq Hariri and others. In establishing the Commission first, the investigative process has, for all intents and purposes, begun. In so doing, it will have the effect of reducing the lifespan of the tribunal and increasing the efficiency and cost-effectiveness of its operation.

III. The jurisdiction of the special tribunal: temporal, personal and subject matter

A. Temporal jurisdiction

11. In its resolution 1664 (2006), the Security Council envisaged the prosecution of those responsible for the single terrorist bombing that killed former Prime Minister Rafiq Hariri and others on 14 February 2005. The Hariri assassination, however, was committed in a context of other attacks bearing the same or similar characteristics committed between 1 October 2004 and 12 December 2005. Extending the jurisdiction of the tribunal beyond the assassination of Rafiq Hariri to other attacks is not, strictly speaking, an extension of the temporal jurisdiction of the tribunal, but rather an extension of its jurisdiction to include, within a specified period, other attacks that the tribunal might find to be connected to the Hariri assassination and similar to it in nature and gravity. The list of such attacks is included in the third report of the Commission (S/2006/161, para. 55; attached to this report as annex II).

12. The reasons for the inclusion of these other attacks are threefold:

(a) As the investigation of the Commission has progressed, potential links have emerged between the assassination of Rafiq Hariri and other attacks;

(b) The expansion of the mandate of the Commission to provide technical assistance to the Lebanese authorities in respect of the 14 other attacks is an indication of interest on the part of the Security Council in judicial accountability beyond the Rafiq Hariri assassination;

(c) Singling out for prosecution one attack in a context of other similar attacks is bound to create a perception of selective justice.

1. Linkage among the attacks

13. Article 1 of the statute of the special tribunal for Lebanon (see annex I, attachment) provides as follows:

> "The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the

Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators."

14. In investigating the potential links between some or all of these attacks, the Commission has identified certain potential linkages, notably the *mode of operation*, or the general pattern of using explosive devices; the *nature of the crime or the criminal intent underlying the attacks*, namely, targeting politicians or influential journalists, as well as creating widespread fear and anxiety among elements of the population by targeting public locations, destabilizing the security situation and causing damage to infrastructure; and *the identity of perpetrators*, of at least some of the attacks.[1] In its fourth report, the Commission reached the preliminary conclusion that the 14 cases were not commissioned and executed by 14 disparate and unconnected persons or groups with an equal number of separate motives. Analytically, the cases can be linked in a number of different ways and from varying perspectives, notably their similarities in the modus operandi, and their possible intent.[2]

2. The expanded mandate of the Commission

15. The mandate of the Commission was originally limited to the investigation of all aspects of the terrorist attack of 14 February 2005 that killed former Prime Minister Rafiq Hariri and others (resolution 1595 (2005)). On 13 December 2005, a day after the assassination of Gebran Tueni, the Government of Lebanon requested the establishment of a tribunal of an international character and the expansion of the mandate of the Commission, or the establishment of another international investigation commission, to investigate the assassination attempts and assassinations and explosions that took place in Lebanon starting with the attempt on the life of Minister Marwan Hamadeh on 1 October 2004. In response to that request, the Security Council, in its resolution 1644 (2005), expanded the mandate of the Commission to include the provision of technical assistance as appropriate to the Lebanese authorities with regard to their investigations on the terrorist attacks perpetrated in Lebanon since 1 October 2004.

16. While the resolution expands the Commission's mandate with respect to the other 14 attacks for the purpose of extending its technical assistance to the Lebanese authorities and not for the purpose of its own investigation, it is an indication

[1] In the view of the Commission, the comparable modus operandi of each attack could point to a single group of perpetrators who aimed to conduct a series of sustainable repetitive attacks with a minimum of complications (S/2006/375, para. 69).

[2] Ibid., para. 83. In its fifth report, the Commission confirmed its preliminary conclusion regarding the interconnectivity between the 14 cases and stated that, as it was developing evidence that linked the cases into differing groupings, it was anticipated that further links between the cases might become evident upon further collection of information and evidence (S/2006/760, para. 67).

nonetheless that the Security Council is interested in judicial accountability for those responsible for those attacks as well.

3. A perception of fairness, impartiality and objectivity of the special tribunal

17. In establishing the temporal jurisdiction of any United Nations-based tribunal, the Organization strives to strike a balance between a temporal jurisdiction comprehensive enough to include the most serious crimes committed by those most responsible throughout the relevant period and a jurisdiction reasonably limited so as not to overburden the prosecutor's office and the tribunal as a whole. It is a balance struck, in fact, between fairness, objectivity and impartiality of the trial process, and its efficiency and cost-effectiveness.

18. In the present circumstances, singling out for prosecution the assassination of Rafiq Hariri, while disregarding a score of other connected attacks could cast a serious doubt on the objectivity and impartiality of the tribunal and lead to the perception of selective justice.

B. Personal jurisdiction of the special tribunal

19. In its resolution 1664 (2006), the Security Council did not prescribe the personal jurisdiction of the tribunal, although it was mindful of the demand of the Lebanese people that all those responsible for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others be identified and brought to justice.

20. Article 1 of the statute accordingly provides that the tribunal shall have jurisdiction "over persons" responsible for the crimes falling within its subject matter jurisdiction, whose modes of criminal responsibility are further elaborated upon in article 3. Within the all-inclusive definition of the personal jurisdiction of the tribunal, the prosecutor will be free to pursue her or his prosecutional strategy and to determine the list of potential indictees according to the evidence before him or her.

C. Subject matter jurisdiction

21. Article 2 of the statute provides as follows:

> "The following shall be applicable to the prosecution and punishment of the crimes referred to in article 1, subject to the provisions of this Statute:
>
> "(a) The provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy; and

"(b) Articles 6 and 7 of the Lebanese law of 11 January 1958 on 'Increasing the penalties for sedition, civil war and interfaith struggle'."[3]

22. While the Lebanese criminal law is the applicable law, its applicability is limited to the crimes and offences provided for in article 2 of the statute. It is also subject to the provisions of the statute and therefore to the exclusion of penalties (e.g. death penalty and forced labour) otherwise applicable under Lebanese law.

23. In keeping with the Security Council mandate requesting the Secretary-General to establish a tribunal of an international character and in the circumstances of Lebanon where a pattern of terrorist attacks seems to have emerged, it was considered whether to qualify the crimes as crimes against humanity and to define them, for the purpose of this statute, as murder or other inhumane acts of similar gravity causing great suffering or serious injury to body or to mental health, when committed as part of a widespread or systematic attack directed against the civilian population.

24. Mindful of the differences in scope and number of victims between the series of terrorist attacks committed in Lebanon and the killings and executions perpetrated on a large and massive scale in other parts of the world subject to the jurisdiction of any of the existing international criminal jurisdictions, it was nevertheless considered that the 14 attacks committed in Lebanon could meet the prima facie definition of the crime, as developed in the jurisprudence of international criminal tribunals. The attacks that occurred in Lebanon since 1 October 2004 could reveal a "pattern" or "methodical plan" of attacks against a civilian population, albeit not in its entirety. They could be "collective" in nature, or "a multiple commission of acts"[4] and, as such, exclude a single, isolated or random conduct of an individual acting alone. For the crime of murder, as part of a systematic attack against a civilian population, to qualify as a "crime against humanity", its massive scale is not an indispensable element.

25. However, considering the views expressed by interested members of the Security Council, there was insufficient support for the inclusion of crimes against humanity within the subject matter jurisdiction of the tribunal. For this reason, therefore, the qualification of the crimes was limited to common crimes under the Lebanese Criminal Code.

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[3] Article 314 of the Criminal Code provides as follows:

"The term 'acts of terrorism' includes all acts that are intended to cause a state of alarm and have been committed by means such as explosive devices, inflammable substances, toxic or corrosive products or infectious or microbial agents that are liable to pose a public threat."

Articles 6 and 7, respectively, of the 1958 law provide:

"All acts of terrorism shall be punishable by hard labour for life. Capital punishment shall be incurred if there were human fatalities or if a building has been wholly or partially destroyed when a person was inside, or if the act results in the destruction, even partial, of a public building, industrial installation, ship or other structure or damage to communications or transport links."

"Conspiracy to commit one of the crimes mentioned in the preceding articles shall be punishable by hard labour for life."

[4] Article 7, paragraph 2 (a), of the Rome Statute of the International Criminal Court defines an "attack directed against any civilian population" as "a course of conduct involving the multiple commission of acts ... against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack".

D. Individual criminal responsibility

26. Under article 3, paragraph 1, of the statute, all those who committed, participated as accomplice, organized or directed others to commit the crime, or otherwise contributed to the commission of the crime, shall be individually responsible. This is a reflection of the Lebanese Criminal Code and general criminal law principles, evidenced, inter alia, by article 2, paragraph 3, of the International Convention for the Suppression of Terrorist Bombings of 1997 (General Assembly resolution 52/164, annex). Article 3, paragraph 2, reflects the principle of command responsibility both under international law and national criminal and military codes as more fully articulated in article 28, subparagraph (b), of the Statute of the International Criminal Court. Under article 3, paragraph 3, obedience to superior order is no defence, but may be considered in mitigation of punishment.

IV. Organizational structure of the special tribunal

A. The organs of the special tribunal

27. The special tribunal for Lebanon will consist of the following organs: the chambers (a pre-trial judge, a trial chamber and an appeals chamber), the prosecutor, the registry and the defence office. The composition of the chambers is mixed, with a majority of international judges in the trial and the appeals chambers. An international prosecutor, assisted by a Lebanese deputy prosecutor, is responsible for the investigation and prosecution of persons who may have committed the crimes falling within the jurisdiction of the tribunal. The registrar is appointed by the Secretary-General and is a staff member of the United Nations. The establishment of the special tribunal with a majority of international judges, an international prosecutor and a registrar is consistent with the long-established United Nations position that in the establishment of any mixed tribunal a substantial international component is a guarantee for the independence, objectivity and impartiality of the trial process.

B. Pre-trial judge

28. Pre-trial proceedings exist in different forms in all international criminal tribunals. However, unlike the pre-trial judge of either of the ad hoc tribunals for the former Yugoslavia and Rwanda, or of the Special Court for Sierra Leone, who is designated by the presiding judge of a trial chamber from among the members of that chamber, the pre-trial judge of the special tribunal for Lebanon is a dedicated, single international judge serving as a pre-trial judge only and not as a member of any of the chambers.

29. The role of the pre-trial judge is primarily to review the indictment and, if a prima facie case is established, to confirm the indictment. At the pre-trial phase and throughout the investigation, the pre-trial judge may issue any orders or warrants of arrest, detention or transfer of persons as may be requested by the prosecutor for the purpose of the investigation. In the decade-long experience of United Nations-based tribunals, the role of the pre-trial judge has proved crucial to ensuring the efficiency and expediency of the trial process.

C. Defence office

30. The need for a defence office to protect the rights of suspects and accused has evolved in the practice of United Nations-based tribunals as part of the need to ensure "equality of arms", where the prosecutor's office is an organ of the tribunal and is financed in its entirety through the budget of the tribunal. The statute of the special tribunal institutionalizes the defence office. The head of the office is appointed by the Secretary-General, although, in carrying out its functions, the office is independent. The defence office of the special tribunal is to protect the rights of the defence, draw up the list of defence counsel and provide support and assistance to defence counsel and persons entitled to such legal assistance.

V. Conduct of the trial process

A. Due process of law

31. With all the specificities of the special tribunal for Lebanon, its standards of justice and guarantees of due process of law are modelled on the highest international standards of criminal justice. In addition to listing the rights of the accused, including an elaborated provision on the presumption of innocence and the burden of proof, the statute provides for the rights of suspects during investigation, including the right not to be compelled to incriminate oneself, to be informed of the charges against him or her, to have legal assistance and to be questioned in the presence of counsel. The statute also protects the rights of victims whose personal interests are affected and, while not recognizing them as "*parties civiles*", it permits their views and concerns to be presented and considered at all stages of the proceedings.

B. Elements of civil law and common law systems combined

32. The proceedings before the special tribunal, while essentially adversarial, contain elements of both civil and common law systems. While distinctive features of civil law, namely, the institution of an investigating judge and the participation of victims as "*parties civiles*" are absent, the trial process before the special tribunal is inspired by the civil law system in the following two respects, the active role of the judges and the conduct of trials in absentia:

(a) The judges of the special tribunal will take a more active role in the conduct of the trial process and the examination of witnesses. Under article 20 of the statute, unless otherwise decided by the trial chamber, "examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence". The trial chamber may also *proprio motu* "decide to call additional witnesses and/or order the production of additional evidence";

(b) The institution of trials in absentia is common in a number of civil law legal systems, including Lebanon's. In addition, in the present case, where the conduct of joint trials for some or all of the cases falling within the jurisdiction of the tribunal is likely, it would be crucial to ensure that the legal process is not unduly or indefinitely delayed because of the absence of some accused.

33. In introducing the institution of trials in absentia on the conditions that the accused has waived his or her right to be present, that he or she has not been handed over or absconded, or otherwise cannot be found, the statute of the special tribunal takes account of the relevant case law of the European Court of Human Rights, which determined the regularity of trials in absentia in full respect for the rights of the accused.[5] Accordingly, and as a supplement to the Lebanese Criminal Procedure, article 22 of the statute provides that, where hearings are conducted in the absence of the accused, the special tribunal shall ensure that the accused has designated a defence counsel to be present in the trial or that, if he or she has refused to do so, one will be assigned to him or her by the tribunal's defence office. In case of conviction, the accused shall have the right to be re-tried in his or her presence, if the accused has not designated a defence counsel of his or her choosing in the first trial. Otherwise, the conviction will stand.

C. Receivability and admissibility of evidence collected prior to the establishment of the special tribunal

34. It will be necessary to have a coordinated transition between the work of the Commission and the special tribunal. While the modalities of such transition would be determined taking into account the progress of work of the Commission, it is necessary at this stage to ensure that the work of the Commission is preserved and that evidence collected by it prior to the establishment of the tribunal is nevertheless receivable by the tribunal.

35. In this connection, the Commission noted in its fourth report (S/2006/375, para. 111), that:

> "While based on relevant international standards, the internal procedure takes into account Lebanese law and judicial procedures, as well as the practice of the Commission since its establishment. In defining the standards to be applied, the Commission considered the procedures of international criminal jurisdictions and the minimum guarantees afforded by international criminal law and international human rights law. The internal procedure will therefore help ensure that any information collected or obtained by the Commission is admissible in future legal proceedings, notably before a tribunal of an international character".

36. In the circumstances, it is necessary to provide for the receivability of evidence collected by the national authorities of Lebanon and by the Commission in accordance with its mandate, on the understanding that its admissibility and the weight to be given to such evidence shall be determined by the tribunal in accordance with international standards on the collection of evidence.

[5] Case of *Krombach v. France*, European Court of Human Rights, Application No. 29731/96, Judgment, 13 February 2001, and Case of *Sejdovic v. Italy*, European Court of Human Rights, Application No. 56581/00, Judgment, 1 March 2006.

VI. Agreement between the United Nations and the Government of Lebanon

37. The agreement between the United Nations and the Government of Lebanon would govern the terms of United Nations cooperation in establishing the tribunal. It stipulates the composition of the tribunal, the procedure for the nomination and appointment of judges (both international and Lebanese), of the international prosecutor and the Lebanese deputy prosecutor and of the registrar and other members of the tribunal, as well as the privileges and immunities to which they are entitled.

38. As a non-United Nations organ, the special tribunal would not be entitled to the privileges and immunities of the Convention on the Privileges and Immunities of the United Nations of 1946. For the special tribunal, its premises, funds, archives and all members of the tribunal, to enjoy comparable privileges and immunities, the agreement between the United Nations and the Government of Lebanon, as well as the future headquarters agreement between the United Nations, the Government of Lebanon and the host State, will have to provide for the necessary privileges and immunities.

39. The agreement between the United Nations and the Government of Lebanon draws, for the most part, upon the agreements signed between the United Nations and the Governments of Cambodia and of Sierra Leone. The provisions relating to the location of the seat and the funding mechanism, however, are Lebanon-specific.

A. Location of the seat

40. For a variety of reasons, the parties share the view that it would be desirable to locate the seat of the tribunal outside Lebanon. In the choice of the seat, considerations of justice and fairness, administrative efficiency, the rights of victims and proximity to witnesses, existence of suitable facilities — both for the tribunal and its detention facilities — security arrangements and affordable costs, would be fully taken into account.

41. The location of the seat outside Lebanon will require the conclusion of a headquarters agreement between the United Nations, the Government of Lebanon and the host State. It is envisaged that when an agreement, in principle, is reached on the location of the seat, the Secretariat will dispatch a United Nations planning mission to identify adequate premises and negotiate the terms of the headquarters agreement.

42. Like the "split seat" of the Office of the Prosecutor of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, where the Prosecutor conducts some investigations through his office in Kigali, while the seat of the Tribunal is in Arusha, the choice of the seat of the special tribunal outside Lebanon will not affect the operation of the prosecutor's office and the conduct of investigations in Lebanon, as necessary and subject to the conclusion of appropriate arrangements

with the Government of Lebanon. The arrangements governing the presence of the Commission in Lebanon under the Memorandum of Understanding between the Government of the Republic of Lebanon and the United Nations regarding the Modalities of Cooperation for the International Independent Investigation Commission, signed on 13 June 2005 (see S/2005/393), depending on the circumstances prevailing at the time of the establishment of the tribunal, may be expanded to apply, mutatis mutandis, to the presence of an office of the prosecutor in Lebanon.

43. As is customarily the case with respect to tribunals of all kinds, the possibility that the special tribunal for Lebanon will meet away from its seat when it considers it necessary for the efficient exercise of its functions is provided for in article 8, paragraph 2, of the agreement.

B. Funding mechanism

44. In its resolution 1664 (2006), the Security Council requested the Secretary-General to submit options for a funding mechanism appropriate to ensure the continued and effective functioning of the tribunal. Without prejudice to the authority of the General Assembly in budgetary matters under Article 17 of the Charter of the United Nations, several options are, in principle, available in the determination of the funding mechanism of the special tribunal: assessed contributions in whole or in part; voluntary contributions; or assessed and voluntary contributions combined. As the Government of Lebanon has expressed its willingness to bear a substantial part of the expenses of the tribunal,[6] all options but one include a provision that 49 per cent of the expenses of the tribunal would be borne by the Government of Lebanon. An indication of possible options and a proposed corresponding article are described below.

1. Assessed contributions

45. The merits of assessed contributions — the funding mechanism of the two ad hoc tribunals, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda — were debated at the time of the establishment of the Special Court for Sierra Leone. In his report to the Security Council (S/2000/915), the Secretary-General expressed the view that only regular, predictable, assessed contributions could produce a viable and sustainable mechanism affording secure and continuous funding. It was also his view (para. 70) that:

> "A financial mechanism based entirely on voluntary contributions will not provide the assured and continuous source of funding which would be required to appoint the judges, the Prosecutor and the Registrar, to contract the services of all administrative and support staff and to purchase the necessary equipment. The risks associated with the establishment of an operation of this kind with insufficient funds, or without long-term assurances of continuous availability of funds, are very high, in terms of both moral responsibility and loss of credibility of the Organization, and its exposure to legal liability."

[6] A firm commitment by the Government of Lebanon on defraying its share in the expenses of the tribunal would be required before the agreement could be signed by the Secretary-General.

46. Funding through assessed contributions could be either in whole or in part. If considered an expense of the Organization under Article 17 of the Charter of the United Nations, it should be financed from assessed contributions. Any voluntary contributions, including the contribution of the Government of Lebanon, would be supplemental and be used to implement specific non-core activities. It is recalled in this connection that if a decision to fund the special tribunal through assessed contributions is adopted, it would be for the General Assembly, as the authority entrusted under Article 17 of the Charter with the responsibility to consider and approve the budget, to decide on the source of funding, as well as on any budgetary and administrative arrangements to be put in place. It is also recalled that funding through assessed contributions would trigger the applicability to the special tribunal of the United Nations Financial and Staff Regulations and Rules.

47. If the mechanism of assessed contributions in whole is accepted, the relevant provision of the agreement would read:

> "The expenses of the Special Tribunal shall be considered expenses of the Organization in accordance with Article 17 of the Charter of the United Nations."

48. If the mechanism of assessed contributions in part is accepted, the relevant provision in the agreement would read:

> "The expenses of the Special Tribunal shall be borne in the following manner:
>
> "(a) Fifty-one per cent of the expenses of the Tribunal shall be considered expenses of the Organization in accordance with Article 17 of the Charter of the United Nations;
>
> "(b) Forty-nine per cent of the expenses of the Tribunal shall be borne by the Government of Lebanon."

2. Voluntary contributions

49. Voluntary contributions was the funding mechanism of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, although in the former case a one-time subvention was granted by the General Assembly to replenish the dwindling reserves of the Special Court. If the option of voluntary contributions, as the sole funding mechanism of the tribunal, is adopted, then the corresponding article would read:

> "The expenses of the Special Tribunal shall be borne in the following manner:
>
> "(a) Fifty-one per cent of the expenses of the Tribunal shall be borne by voluntary contributions from States;
>
> "(b) Forty-nine per cent of the expenses of the Tribunal shall be borne by the Government of Lebanon."

3. Combined funding mechanism

50. While the Secretary-General maintains his principled position in support of assessed contributions as the funding mechanism of international criminal jurisdictions, the uniqueness of the special tribunal for Lebanon may warrant a

different approach to the establishment of the financial mechanism. The formula proposed is a combined formula of both voluntary and assessed contributions. It provides for a continuation of assessed contributions to fund investigations (as is currently the case with the Commission) and this may be considered more viable and sustainable than other options wholly reliant on voluntary contributions. If accepted, the corresponding article would read:

> "The expenses of the Special Tribunal for Lebanon shall be borne in the following manner:
>
> "(a) The expenses incurred for investigations shall continue to be considered expenses of the Organization in accordance with Article 17 of the Charter of the United Nations;
>
> "(b) Fifty-one per cent of the expenses of the Tribunal, excluding those related to investigations, shall be borne by voluntary contributions from States;
>
> "(c) Forty-nine per cent of the expenses of the Tribunal, excluding those related to investigations, shall be borne by the Government of Lebanon."

51. With regard to the options described in paragraphs 49 and 50 above, both of which involve voluntary contributions, the sufficiency of funds must be guaranteed before the Secretary-General can be expected to commence the process of establishment of the tribunal. In any of these options, therefore, the following text should be inserted as paragraph 2 of the corresponding article:

> "It is understood that the Secretary-General will commence the process of establishing the Tribunal when he has sufficient contributions in hand to finance the establishment of the Tribunal and twelve months of its operations, plus pledges equal to the anticipated expenses of the following twenty-four months of the Tribunal's operation. Should voluntary contributions be insufficient for the Tribunal to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Tribunal."

C. Cooperation with the special tribunal

52. Article 15 of the agreement places an obligation on the Government of Lebanon to cooperate with the tribunal at all stages of the proceedings and to comply with its requests for assistance in the identification and location of persons, service of documents, arrest and detention of persons, and the transfer of indictees to the tribunal.

53. In maintaining the logic of Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), under which Member States are obliged to cooperate fully with the Commission in its investigation of the Hariri assassination, the Council may wish, at the appropriate stages and as necessary, to consider similar measures to enable the special tribunal more effectively to prosecute those responsible for the attack against Rafiq Hariri and for other attacks falling within the jurisdiction of the tribunal.

VII. Conclusion

54. On 10 November 2006, I transmitted to the Prime Minister of Lebanon the draft agreement between the United Nations and the Government of Lebanon on the establishment of a special tribunal for Lebanon, to which was annexed a draft statute for such a tribunal. By his letter to me of 13 November 2006, the Prime Minister informed me that the Lebanese Council of Ministers had agreed in its session of that date to the draft and looked forward to the completion of the remaining steps leading to the establishment of the tribunal. By a note verbale dated 14 November 2006, the Permanent Mission of Lebanon forwarded to me a copy of observations made by the President of the Lebanese Republic, including a challenge to the decision of the Council of Ministers. The negotiated instruments are now submitted to the Security Council for its consideration.

Annex I

Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon

Whereas the Security Council, in its resolution 1664 (2006) of 29 March 2006, which responded to the request of the Government of Lebanon to establish a tribunal of an international character to try all those who are found responsible for the terrorist crime which killed the former Lebanese Prime Minister Rafiq Hariri and others, recalled all its previous resolutions, in particular resolutions 1595 (2005) of 7 April 2005, 1636 (2005) of 31 October 2005 and 1644 (2005) of 15 December 2005,

Whereas the Security Council has requested the Secretary-General of the United Nations (hereinafter "the Secretary-General") "to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice", taking into account the recommendations of the Secretary-General's report of 21 March 2006 (S/2006/176) and the views that have been expressed by Council members,

Whereas the Secretary-General and the Government of the Lebanese Republic (hereinafter "the Government") have conducted negotiations for the establishment of a Special Tribunal for Lebanon (hereinafter "the Special Tribunal" or "the Tribunal"),

Now therefore the United Nations and the Lebanese Republic (hereinafter referred to jointly as the "Parties") have agreed as follows:

Article 1
Establishment of the Special Tribunal

1. There is hereby established a Special Tribunal for Lebanon to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators.

2. The Special Tribunal shall function in accordance with the Statute of the Special Tribunal for Lebanon. The Statute is attached to this Agreement and forms an integral part thereof.

Article 2
Composition of the Special Tribunal and appointment of judges

1. The Special Tribunal shall consist of the following organs: the Chambers, the Prosecutor, the Registry and the Defence Office.

2. The Chambers shall be composed of a Pre-Trial Judge, a Trial Chamber and an Appeals Chamber, with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Tribunal, the Secretary-General or the President of the Special Tribunal so requests.

3. The Chambers shall be composed of no fewer than eleven independent judges and no more than fourteen such judges, who shall serve as follows:

(a) A single international judge shall serve as a Pre-Trial Judge;

(b) Three judges shall serve in the Trial Chamber, of whom one shall be a Lebanese judge and two shall be international judges;

(c) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (b) above;

(d) Five judges shall serve in the Appeals Chamber, of whom two shall be Lebanese judges and three shall be international judges; and

(e) Two alternate judges, of whom one shall be a Lebanese judge and one shall be an international judge.

4. The judges of the Tribunal shall be persons of high moral character, impartiality and integrity, with extensive judicial experience. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

5. (a) Lebanese judges shall be appointed by the Secretary-General to serve in the Trial Chamber or the Appeals Chamber or as an alternate judge from a list of twelve persons presented by the Government upon the proposal of the Lebanese Supreme Council of the Judiciary;

(b) International judges shall be appointed by the Secretary-General to serve as Pre-Trial Judge, a Trial Chamber Judge, an Appeals Chamber Judge or an alternate judge, upon nominations forwarded by States at the invitation of the Secretary-General, as well as by competent persons;

(c) The Government and the Secretary-General shall consult on the appointment of judges;

(d) The Secretary-General shall appoint judges, upon the recommendation of a selection panel he has established after indicating his intentions to the Security Council. The selection panel shall be composed of two judges, currently sitting on or retired from an international tribunal, and the representative of the Secretary-General.

6. At the request of the presiding judge of a Trial Chamber, the President of the Special Tribunal may, in the interest of justice, assign alternate judges to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

7. Judges shall be appointed for a three-year period and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

8. Lebanese judges appointed to serve in the Special Tribunal shall be given full credit for their period of service with the Tribunal on their return to the Lebanese national judiciaries from which they were released and shall be reintegrated at a level at least comparable to that of their former position.

Article 3
Appointment of a Prosecutor and a Deputy Prosecutor

1. The Secretary-General, after consultation with the Government, shall appoint a Prosecutor for a three-year term. The Prosecutor may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

2. The Secretary-General shall appoint the Prosecutor, upon the recommendation of a selection panel he has established after indicating his intentions to the Security Council. The selection panel shall be composed of two judges, currently sitting on or retired from an international tribunal, and the representative of the Secretary-General.

3. The Government, in consultation with the Secretary-General and the Prosecutor, shall appoint a Lebanese Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.

4. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

5. The Prosecutor shall be assisted by such Lebanese and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4
Appointment of a Registrar

1. The Secretary-General shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Tribunal.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a three-year term and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

Article 5
Financing of the Special Tribunal

To be completed.

Article 6
Management Committee

The parties shall consult concerning the establishment of a Management Committee.

Article 7
Juridical capacity

The Special Tribunal shall possess the juridical capacity necessary:

(a) To contract;

(b) To acquire and dispose of movable and immovable property;

(c) To institute legal proceedings;

(d) To enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Tribunal.

Article 8
Seat of the Special Tribunal

1. The Special Tribunal shall have its seat outside Lebanon. The location of the seat shall be determined having due regard to considerations of justice and fairness as well as security and administrative efficiency, including the rights of victims and access to witnesses, and subject to the conclusion of a headquarters agreement between the United Nations, the Government and the State that hosts the Tribunal.

2. The Special Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions.

3. An Office of the Special Tribunal for the conduct of investigations shall be established in Lebanon subject to the conclusion of appropriate arrangements with the Government.

Article 9
Inviolability of premises, archives and all other documents

1. The Office of the Special Tribunal in Lebanon shall be inviolable. The competent authorities shall take appropriate action that may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the premises of the Tribunal without its express consent.

2. The property, funds and assets of the Office of the Special Tribunal in Lebanon, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of the Office of the Special Tribunal in Lebanon, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable.

Article 10
Funds, assets and other property

The Office of the Special Tribunal, its funds, assets and other property in Lebanon, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

Article 11
Privileges and immunities of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office

1. The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office, while in Lebanon, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations of 1961.

2. Privileges and immunities are accorded to the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office in the interest of the Special Tribunal and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purposes for which it is accorded shall lie with the Secretary-General, in consultation with the President of the Tribunal.

Article 12
Privileges and immunities of international and Lebanese personnel

1. Lebanese and international personnel of the Office of the Special Tribunal, while in Lebanon, shall be accorded:

(a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Office of the Special Tribunal;

(b) Exemption from taxation on salaries, allowances and emoluments paid to them.

2. International personnel shall, in addition thereto, be accorded:

(a) Immunity from immigration restriction;

(b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Lebanon.

3. The privileges and immunities are granted to the officials of the Office of the Special Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Tribunal.

Article 13
Defence counsel

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Tribunal shall not be subjected, while in Lebanon, to any measure that may affect the free and independent exercise of his or her functions.

2. In particular, the counsel shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of personal baggage;

(b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(c) Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunity shall continue to be accorded after termination of his or her functions as a counsel of a suspect or accused;

(d) Immunity from any immigration restrictions during his or her stay as well as during his or her journey to the Tribunal and back.

Article 14
Security, safety and protection of persons referred to in this Agreement

The Government shall take effective and adequate measures to ensure the appropriate security, safety and protection of personnel of the Office of the Special Tribunal and other persons referred to in this Agreement, while in Lebanon. It shall take all appropriate steps, within its capabilities, to protect the equipment and premises of the Office of the Special Tribunal from attack or any action that prevents the Tribunal from discharging its mandate.

Article 15
Cooperation with the Special Tribunal

1. The Government shall cooperate with all organs of the Special Tribunal, in particular with the Prosecutor and defence counsel, at all stages of the proceedings. It shall facilitate access of the Prosecutor and defence counsel to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Tribunal or an order issued by the Chambers, including, but not limited to:

(a) Identification and location of persons;

(b) Service of documents;

(c) Arrest or detention of persons;

(d) Transfer of an indictee to the Tribunal.

Article 16
Amnesty

The Government undertakes not to grant amnesty to any person for any crime falling within the jurisdiction of the Special Tribunal. An amnesty already granted in respect of any such persons and crimes shall not be a bar to prosecution.

Article 17
Practical arrangements

With a view to achieving efficiency and cost-effectiveness in the operation of the Special Tribunal:

(a) Appropriate arrangements shall be made to ensure that there is a coordinated transition from the activities of the International Independent Investigation Commission, established by the Security Council in its resolution 1595 (2005), to the activities of the Office of the Prosecutor;

(b) Judges of the Trial Chamber and the Appeals Chamber shall take office on a date to be determined by the Secretary-General in consultation with the President of the Special Tribunal. Pending such a determination, judges of both Chambers shall be convened on an ad hoc basis to deal with organizational matters and serving, when required, to perform their duties.

Article 18
Settlement of disputes

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation or by any other mutually agreed upon mode of settlement.

Article 19
Entry into force and commencement of the functioning of the Special Tribunal

1. This Agreement shall enter into force on the day after the Government has notified the United Nations in writing that the legal requirements for entry into force have been complied with.

2. The Special Tribunal shall commence functioning on a date to be determined by the Secretary-General in consultation with the Government, taking into account the progress of the work of the International Independent Investigation Commission.

Article 20
Amendment

This Agreement may be amended by written agreement between the Parties.

Article 21
Duration of the Agreement

1. This Agreement shall remain in force for a period of three years from the date of the commencement of the functioning of the Special Tribunal.

2. Three years after the commencement of the functioning of the Special Tribunal the Parties shall, in consultation with the Security Council, review the progress of

the work of the Special Tribunal. If at the end of this period of three years the activities of the Tribunal have not been completed, the Agreement shall be extended to allow the Tribunal to complete its work, for a further period(s) to be determined by the Secretary-General in consultation with the Government and the Security Council.

3. The provisions relating to the inviolability of the funds, assets, archives and documents of the Office of the Special Tribunal in Lebanon, the privileges and immunities of those referred to in this Agreement, as well as provisions relating to defence counsel and the protection of victims and witnesses, shall survive termination of this Agreement.

In witness whereof, the following duly authorized representatives of the United Nations and of the Lebanese Republic have signed this Agreement.

Done at _____ on _____ 2006, in three originals in the Arabic, French and English languages, all texts being equally authentic.

For the United Nations:

_____

For the Lebanese Republic:

_____

Attachment
Statute of the Special Tribunal for Lebanon

Having been established by an Agreement between the United Nations and the Lebanese Republic (hereinafter "the Agreement") pursuant to Security Council resolution 1664 (2006) of 29 March 2006, which responded to the request of the Government of Lebanon to establish a tribunal of an international character to try all those who are found responsible for the terrorist crime which killed the former Lebanese Prime Minister Rafiq Hariri and others, the Special Tribunal for Lebanon (hereinafter "the Special Tribunal") shall function in accordance with the provisions of this Statute.

Section I
Jurisdiction and applicable law

Article 1
Jurisdiction of the Special Tribunal

The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators.

Article 2
Applicable criminal law

The following shall be applicable to the prosecution and punishment of the crimes referred to in article 1, subject to the provisions of this Statute:

(a) The provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy; and

(b) Articles 6 and 7 of the Lebanese law of 11 January 1958 on "Increasing the penalties for sedition, civil war and interfaith struggle".

Article 3
Individual criminal responsibility

1. A person shall be individually responsible for crimes within the jurisdiction of the Special Tribunal if that person:

(a) Committed, participated as accomplice, organized or directed others to commit the crime set forth in article 2 of this Statute; or

(b) Contributed in any other way to the commission of the crime set forth in article 2 of this Statute by a group of persons acting with a common purpose, where such contribution is intentional and is either made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the crime.

2. With respect to superior and subordinate relationships, a superior shall be criminally responsible for any of the crimes set forth in article 2 of this Statute committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(a) The superior either knew, or consciously disregarded information that clearly indicated that the subordinates were committing or about to commit such crimes;

(b) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

3. The fact that the person acted pursuant to an order of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Tribunal determines that justice so requires.

Article 4
Concurrent jurisdiction

1. The Special Tribunal and the national courts of Lebanon shall have concurrent jurisdiction. Within its jurisdiction, the Tribunal shall have primacy over the national courts of Lebanon.

2. Upon the assumption of office of the Prosecutor, as determined by the Secretary-General, and no later than two months thereafter, the Special Tribunal shall request the national judicial authority seized with the case of the attack against Prime Minister Rafiq Hariri and others to defer to its competence. The Lebanese judicial authority shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any. Persons detained in connection with the investigation shall be transferred to the custody of the Tribunal.

3. (a) At the request of the Special Tribunal, the national judicial authority seized with any of the other crimes committed between 1 October 2004 and 12 December 2005, or a later date decided pursuant to article 1, shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any, for review by the Prosecutor;

(b) At the further request of the Tribunal, the national authority in question shall defer to the competence of the Tribunal. It shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any, and persons detained in connection with any such case shall be transferred to the custody of the Tribunal;

(c) The national judicial authorities shall regularly inform the Tribunal of the progress of their investigation. At any stage of the proceedings, the Tribunal may formally request a national judicial authority to defer to its competence.

Article 5
Non bis in idem

1. No person shall be tried before a national court of Lebanon for acts for which he or she has already been tried by the Special Tribunal.

2. A person who has been tried by a national court may be subsequently tried by the Special Tribunal if the national court proceedings were not impartial or independent, were designed to shield the accused from criminal responsibility for crimes within the jurisdiction of the Tribunal or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under this Statute, the Special Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 6
Amnesty

An amnesty granted to any person for any crime falling within the jurisdiction of the Special Tribunal shall not be a bar to prosecution.

Section II
Organization of the Special Tribunal

Article 7
Organs of the Special Tribunal

The Special Tribunal shall consist of the following organs:

(a) The Chambers, comprising a Pre-Trial Judge, a Trial Chamber and an Appeals Chamber;

(b) The Prosecutor;

(c) The Registry; and

(d) The Defence Office.

Article 8
Composition of the Chambers

1. The Chambers shall be composed as follows:

(a) One international Pre-Trial Judge;

(b) Three judges who shall serve in the Trial Chamber, of whom one shall be a Lebanese judge and two shall be international judges;

(c) Five judges who shall serve in the Appeals Chamber, of whom two shall be Lebanese judges and three shall be international judges;

(d) Two alternate judges, one of whom shall be a Lebanese judge and one shall be an international judge.

2. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Tribunal.

3. At the request of the presiding judge of the Trial Chamber, the President of the Special Tribunal may, in the interest of justice, assign the alternate judges to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 9
Qualification and appointment of judges

1. The judges shall be persons of high moral character, impartiality and integrity, with extensive judicial experience. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the established competence of the judges in criminal law and procedure and international law.

3. The judges shall be appointed by the Secretary-General, as set forth in article 2 of the Agreement, for a three-year period and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

Article 10
Powers of the President of the Special Tribunal

1. The President of the Special Tribunal, in addition to his or her judicial functions, shall represent the Tribunal and be responsible for its effective functioning and the good administration of justice.

2. The President of the Special Tribunal shall submit an annual report on the operation and activities of the Tribunal to the Secretary-General and to the Government of Lebanon.

Article 11
The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for the crimes falling within the jurisdiction of the Special Tribunal. In the interest of proper administration of justice, he or she may decide to charge jointly persons accused of the same or different crimes committed in the course of the same transaction.

2. The Prosecutor shall act independently as a separate organ of the Special Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor shall be appointed, as set forth in article 3 of the Agreement, by the Secretary-General for a three-year term and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Lebanese Deputy Prosecutor and by such other Lebanese and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

5. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Lebanese authorities concerned.

Article 12
The Registry

1. Under the authority of the President of the Special Tribunal, the Registry shall be responsible for the administration and servicing of the Tribunal.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General and shall be a staff member of the United Nations. He or she shall serve for a three-year term and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, and such other appropriate assistance for witnesses who appear before the Special Tribunal and others who are at risk on account of testimony given by such witnesses.

Article 13
The Defence Office

1. The Secretary-General, in consultation with the President of the Special Tribunal, shall appoint an independent Head of the Defence Office, who shall be responsible for the appointment of the Office staff and the drawing up of a list of defence counsel.

2. The Defence Office, which may also include one or more public defenders, shall protect the rights of the defence, provide support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Pre-Trial Judge or a Chamber in respect of specific issues.

Article 14
Official and working languages

The official languages of the Special Tribunal shall be Arabic, French and English. In any given case proceedings, the Pre-Trial Judge or a Chamber may decide that one or two of the languages may be used as working languages as appropriate.

Section III
Rights of defendants and victims

Article 15
Rights of suspects during investigation

A suspect who is to be questioned by the Prosecutor shall not be compelled to incriminate himself or herself or to confess guilt. He or she shall have the following rights of which he or she shall be informed by the Prosecutor prior to questioning, in a language he or she speaks and understands:

(a) The right to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Special Tribunal;

(b) The right to remain silent, without such silence being considered in the determination of guilt or innocence, and to be cautioned that any statement he or she makes shall be recorded and may be used in evidence;

(c) The right to have legal assistance of his or her own choosing, including the right to have legal assistance provided by the Defence Office where the interests of justice so require and where the suspect does not have sufficient means to pay for it;

(d) The right to have the free assistance of an interpreter if he or she cannot understand or speak the language used for questioning;

(e) The right to be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 16
Rights of the accused

1. All accused shall be equal before the Special Tribunal.

2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Tribunal for the protection of victims and witnesses.

3. (a) The accused shall be presumed innocent until proved guilty according to the provisions of this Statute;

(b) The onus is on the Prosecutor to prove the guilt of the accused;

(c) In order to convict the accused, the relevant Chamber must be convinced of the guilt of the accused beyond reasonable doubt.

4. In the determination of any charge against the accused pursuant to this Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate without hindrance with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) Subject to the provisions of article 22, to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To examine all evidence to be used against him or her during the trial in accordance with the Rules of Procedure and Evidence of the Special Tribunal;

(g) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Tribunal;

(h) Not to be compelled to testify against himself or herself or to confess guilt.

5. The accused may make statements in court at any stage of the proceedings, provided such statements are relevant to the case at issue. The Chambers shall decide on the probative value, if any, of such statements.

Article 17
Rights of victims

Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Pre-Trial Judge or the Chamber considers it appropriate.

Section IV
Conduct of proceedings

Article 18
Pre-Trial proceedings

1. The Pre-Trial Judge shall review the indictment. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If he or she is not so satisfied, the indictment shall be dismissed.

2. The Pre-Trial Judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest or transfer of persons, and any other orders as may be required for the conduct of the investigation and for the preparation of a fair and expeditious trial.

Article 19
Evidence collected prior to the establishment of the Special Tribunal

Evidence collected with regard to cases subject to the consideration of the Special Tribunal, prior to the establishment of the Tribunal, by the national authorities of Lebanon or by the International Independent Investigation Commission in accordance with its mandate as set out in Security Council resolution 1595 (2005) and subsequent resolutions, shall be received by the Tribunal. Its admissibility shall be decided by the Chambers pursuant to international standards on collection of evidence. The weight to be given to any such evidence shall be determined by the Chambers.

Article 20
Commencement and conduct of trial proceedings

1. The Trial Chamber shall read the indictment to the accused, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment and instruct the accused to enter a plea.

2. Unless otherwise decided by the Trial Chamber in the interests of justice, examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence.

3. Upon request or *proprio motu*, the Trial Chamber may at any stage of the trial decide to call additional witnesses and/or order the production of additional evidence.

4. The hearings shall be public unless the Trial Chamber decides to hold the proceedings in camera in accordance with the Rules of Procedure and Evidence.

Article 21
Powers of the Chambers

1. The Special Tribunal shall confine the trial, appellate and review proceedings strictly to an expeditious hearing of the issues raised by the charges, or the grounds for appeal or review, respectively. It shall take strict measures to prevent any action that may cause unreasonable delay.

2. A Chamber may admit any relevant evidence that it deems to have probative value and exclude such evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

3. A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

4. In cases not otherwise provided for in the Rules of Procedure and Evidence, a Chamber shall apply rules of evidence that will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

Article 22
Trials in absentia

1. The Special Tribunal shall conduct trial proceedings in the absence of the accused, if he or she:

(a) Has expressly and in writing waived his or her right to be present;

(b) Has not been handed over to the Tribunal by the State authorities concerned;

(c) Has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.

2. When hearings are conducted in the absence of the accused, the Special Tribunal shall ensure that:

(a) The accused has been notified, or served with the indictment, or notice has otherwise been given of the indictment through publication in the media or communication to the State of residence or nationality;

(b) The accused has designated a defence counsel of his or her own choosing, to be remunerated either by the accused or, if the accused is proved to be indigent, by the Tribunal;

(c) Whenever the accused refuses or fails to appoint a defence counsel, such counsel has been assigned by the Defence Office of the Tribunal with a view to ensuring full representation of the interests and rights of the accused.

3. In case of conviction in absentia, the accused, if he or she had not designated a defence counsel of his or her choosing, shall have the right to be retried in his or her presence before the Special Tribunal, unless he or she accepts the judgement.

Article 23
Judgement

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which any separate or dissenting opinions shall be appended.

Article 24
Penalties

1. The Trial Chamber shall impose upon a convicted person imprisonment for life or for a specified number of years. In determining the terms of imprisonment for the crimes provided for in this Statute, the Trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon.

2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

Article 25
Compensation to victims

1. The Special Tribunal may identify victims who have suffered harm as a result of the commission of crimes by an accused convicted by the Tribunal.

2. The Registrar shall transmit to the competent authorities of the State concerned the judgement finding the accused guilty of a crime that has caused harm to a victim.

3. Based on the decision of the Special Tribunal and pursuant to the relevant national legislation, a victim or persons claiming through the victim, whether or not such victim had been identified as such by the Tribunal under paragraph 1 of this article, may bring an action in a national court or other competent body to obtain compensation.

4. For the purposes of a claim made under paragraph 3 of this article, the judgement of the Special Tribunal shall be final and binding as to the criminal responsibility of the convicted person.

Article 26
Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

(a) An error on a question of law invalidating the decision;

(b) An error of fact that has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

Article 27
Review proceedings

1. Where a new fact has been discovered that was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and that could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(a) Reconvene the Trial Chamber;

(b) Retain jurisdiction over the matter.

Article 28
Rules of Procedure and Evidence

1. The judges of the Special Tribunal shall, as soon as practicable after taking office, adopt Rules of Procedure and Evidence for the conduct of the pre-trial, trial and appellate proceedings, the admission of evidence, the participation of victims, the protection of victims and witnesses and other appropriate matters and may amend them, as appropriate.

2. In so doing, the judges shall be guided, as appropriate, by the Lebanese Code of Criminal Procedure, as well as by other reference materials reflecting the highest standards of international criminal procedure, with a view to ensuring a fair and expeditious trial.

Article 29
Enforcement of sentences

1. Imprisonment shall be served in a State designated by the President of the Special Tribunal from a list of States that have indicated their willingness to accept persons convicted by the Tribunal.

2. Conditions of imprisonment shall be governed by the law of the State of enforcement subject to the supervision of the Special Tribunal. The State of enforcement shall be bound by the duration of the sentence, subject to article 30 of this Statute.

Article 30
Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Tribunal accordingly. There shall only be pardon or commutation of sentence if the President of the Tribunal, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Annex II

Attacks perpetrated in Lebanon since 1 October 2004[a]

Following is an overview of the 14 cases in chronological order.

Number	*Date*	*Type of explosion*	*Area*	*Victims*
1	1 October 2004	Car bomb	Dar El-Mraisseh locality, California Street, Beirut	Marwane Hamadeh and driver wounded, bodyguard killed
2	19 March 2005	Bomb	New-Jdeidh, northern suburb of Beirut	11 persons wounded and serious material damage to buildings and cars
3	23 March 2005	Bomb	Altavista shopping centre, Kaslik, north of Beirut	3 persons killed, 7 persons wounded and serious material damage to buildings and cars
4	26 March 2005	Bomb	Sid-El-Bouchria, north-east of Beirut	6 persons wounded and serious material damage to buildings and cars
5	1 April 2005	Bomb	Plaza shopping centre, Broumana, east of Beirut	9 persons wounded and serious material damage to buildings and cars
6	6 May 2005	Bomb	"Voice of Charity" radio station, Jounieh, north of Beirut	11 persons wounded and serious material damage to buildings and cars
7	2 June 2005	Victim's car	Ashrafieh locality, Beirut	Samir Kassir killed
8	21 June 2005	Victim's car	Wata Msaytbeh, Boustany Street, Beirut	George Hawi killed
9	12 July 2005	Car bomb	Naccache area, Beirut	Elias El-Murr and 2 other persons wounded and 1 person killed
10	22 July 2005	Bomb	Monot Street, Ashrafieh locality, Beirut	13 persons wounded and serious material damage to buildings and cars
11	22 August 2005	Bomb	Zalka locality, near Promenade Hotel, north of Beirut	11 persons wounded and serious material damage to buildings and cars
12	16 September 2005	Bomb	Naoum Libki Street, Ashrafieh locality, Beirut	1 person killed and 10 persons wounded and serious material damage to buildings and cars
13	25 September 2005	Victim's car	Ghadir locality, suburb of Beirut	May Chidiac seriously wounded
14	12 December 2005	Car bomb	Mkalles, north of Beirut	Gebran Tueni and 2 other persons killed

[a] See S/2006/161, para. 55.